

SENATE BILL 1799  
By Clabough

AN ACT to amend Tennessee Code Annotated, Title 45; Title 47, Chapter 15 and Title 47, Chapter 14, relative to certain lending practices and to adopt the "Tennessee Fair Lending Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, is amended by adding a new Chapter 20 thereto reading as follows:

45-20-101. This chapter shall be known and may be cited as the "Tennessee Fair Lending Act".

45-20-102. As used in this chapter, unless the context otherwise requires:

(1) "Affiliate" means any company that controls, is controlled by, or is in common control with another company, as set forth in 12 U.S.C. §§ 1841 et seq., and the regulations adopted thereunder.

(2) "Annual percentage rate" means the annual percentage rate for a loan calculated according to the provisions of 15 U.S.C. § 1606 and the regulations adopted thereunder by the federal reserve board.

(3) "Borrower" means any natural person obligated to repay a loan, including, but not limited to, a co-borrower, cosigner, comaker, or guarantor.

(4) "Bridge loan" means a loan with a maturity of less than eighteen (18) months that only requires a payment of interest until such time as the entire unpaid balance is due and payable.

(5) "Covered home loan" means a consumer credit mortgage loan transaction involving property located within this state, that is considered a mortgage under 15 U.S.C. § 1602 (aa) and regulations pursuant thereto promulgated by the federal reserve board, including 12 C.F.R. § 226.32 relating to requirements for certain closed-end home mortgages, for which the original principal balance is less than one hundred thousand dollars (\$100,000).

(6) "Department" means the Tennessee department of financial institutions.

(7) "Lender" means any person who makes a covered home loan or acts as a mortgage broker, finance company, or retail installment seller with respect to a covered home loan, but shall not include any entity organized under the laws of the United States when engaging in secondary market mortgage transactions as an assignee or otherwise.

(8) "Median family income" means median family income for the Metropolitan Statistical Area (MSA) as defined by the director of the United States office of management and budget in which property which secures a covered home loan is located, or for loans secured by property not located within an MSA, the nonmetropolitan median family income for the state, as reported in the most recent estimates made available by the United States department of housing and urban development at the time a loan application is received or the latest such estimates made available in the preceding calendar year, whichever amount is lower. To the extent such information is not readily available from the United States department of housing and urban development in a form suitable

for use by lenders, the department shall periodically publish or otherwise make available to lenders median family income information for MSAs and nonmetropolitan areas that may be relied upon by lenders for purposes of this act.

(9) "Servicer" means the same as set forth in 24 C.F.R. § 3500.2.

(10) "State" means the state of Tennessee.

(11) "Stated income loan" means a loan which requires no verification of income or assets and is approved based upon the income and assets the borrower states on the loan application and the borrower's credit score calculated by the lender.

45-20-103.

(a) Every person who is a lender for purposes of this act shall register with the department unless such person is already regulated by the department or by a state or federal banking regulator and qualified to do business in the state as:

(1) A state or national bank, savings and loan association, savings bank or subsidiary or affiliate thereof,

(2) A state or federal credit union or subsidiary,

(3) An industrial loan and thrift company registered under title 45, chapter 5,

(4) A mortgage broker licensed by the department, or

(5) A residential lender registered under title 45, chapter 13.

(b) It shall be unlawful to engage in the business as a lender, including any broker, agent, or originator of a covered home loan in the state unless such person is licensed, regulated, or registered as provided herein.

(c) If any person violates the provisions of this section regarding registration, the department may take any or all of the following actions:

- (1) Issue a cease and desist order,
- (2) Obtain injunctive relief in any court in Tennessee, or
- (3) Upon a hearing, levy a civil penalty of
  - (A) Up to ten thousand dollars (\$10,000) per day for any ongoing activity, or
  - (B) Up to one hundred thousand dollars (\$100,000) for any loan made in violation of this section.

(d) For purposes of subsection (c) and with regard to any lender who is a corporation, LCC, or partnership, the department may take such action individually against any officer, director, manager, governor, or partner.

45-20-104.

(a) A lender shall not recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered home loan that refinances all or any portion of such existing loan or debt.

(b) The terms of a covered home loan may not provide for a higher interest rate after default on the loan. This prohibition does not apply, however, to interest rate changes in variable rate loans otherwise consistent with the provisions of the loan documents, provided the change in interest rate is not triggered by a default or the acceleration of the indebtedness.

(c) A covered home loan having a term of less than five (5) years may not contain terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. This prohibition does not apply, however, when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the loan is a bridge loan.

(d) A covered home loan may not contain terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of the interest due.

(e) A covered home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(f)

(1) A home improvement contractor shall not have a controlling ownership interest in the lender providing the covered home loan for the work being performed by the contractor.

(2) A lender shall not make any payments to a contractor under a home improvement contract from proceeds of a covered home loan other than:

(A) In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor; or

(B) At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the registrant, and the contractor prior to the date of payment.

(g) A lender shall not finance any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis in conjunction with a covered home loan unless the lender shall comply with the applicable disclosure requirements pursuant to the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations promulgated pursuant thereunder by the federal reserve board.

(h)

(1) No lender, in originating, brokering, or making covered home loans, shall engage in a pattern and practice of extending credit to a borrower for a covered home loan, based on the borrower's collateral, without regard to the borrower's ability to repay, including the borrower's current or expected income, current obligations, and employment.

(2) A lender will be presumed to have violated this subsection (h) if the registrant engages in the pattern or practice of making covered home loans without verifying or documenting the borrower's repayment ability.

(3) Any expected income from any source other than the borrower's equity in the property securing the covered home loan, including regular salary or wages, gifts, expected retirement payments, or income from self-employment, may be considered. A lender may verify and document a borrower's income and current obligations through any reliable source that provides the lender with a reasonable basis for believing there are sufficient funds to support the covered home loan. Reliable sources include, but are not limited to, credit reports, tax returns, pension statements, bank statements, and payment records for employment income.

(4) If the covered home loan is a stated income loan, the reasonable basis for believing there are sufficient funds to support the covered home loan may be based on the income stated by the borrower, as well as other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A lender shall not knowingly or willfully originate a covered home loan as a stated income loan with the intent of evading the provisions of this subsection. A borrower shall be presumed to be able to make the scheduled payments to repay the stated income loan if, at the time the loan is consummated, the borrower's

scheduled monthly payments, as disclosed to the registrant by the loan application and the borrower's credit report, do not exceed fifty percent (50%) of the borrower's monthly gross income. The requirements of this subsection as to stated income loans shall apply only to borrowers whose income, as reported on the loan application, is no greater than one hundred twenty percent (120%) of the median family income. No presumption shall arise that a borrower is not able to make the scheduled payments on a stated income loan if the borrower's scheduled monthly payments exceed fifty percent (50%) of the borrower's monthly gross income as determined pursuant to this subsection.

(i) A lender within one (1) year of having extended credit subject to this act, shall not refinance the loan to the same borrower by making another loan subject to this act, unless the refinancing is in the borrower's interest. The new covered home loan shall be deemed to be in the borrower's interest if it meets one (1) or more of the following factors or otherwise:

(1) The borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;

(2) There is a change in the amortization period of the new loan;

(3) The borrower receives cash in excess of the costs and fees of refinancing;

(4) The borrower's note rate of interest is reduced;

(5) There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or

(6) The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.

A lender is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(j) A lender shall not replace or consolidate a zero (0) interest rate or low-rate loan made by a governmental or nonprofit lender with a covered home loan within the first ten (10) years of the zero (0) interest or low-rate loan unless the originator of the loan consents in writing to the financing. For purposes of this subsection, a low-rate loan shall be defined as a loan that carries a current interest rate two (2) percentage points or more below the yield on United States treasury securities with a comparable maturity when the loan is originated.

(k)

(1) A covered home loan may not contain terms that require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

(2) Notwithstanding subdivision (1), a registrant making a covered home loan may include in the loan contract a prepayment fee or penalty, for up to the first sixty (60) months after the date of consummation of the loan, if:

(A) The borrower has also been offered a choice of another product without a prepayment penalty; and

(B) The borrower has been given, at least three (3) business days prior to the loan consummation, a written disclosure of the terms of the prepayment fee or penalty by the registrant, including the benefit the borrower will receive for accepting the prepayment fee or penalty through either a reduced interest rate on the loan or reduced points or fees.



This subsection shall not be applicable to loans made by companies registered under the provisions of Tennessee Code Annotated, Title 45, Chapter 5.

(l) In addition to other disclosures required by law, a lender may not make a covered home loan unless the lender has given the following notice, or substantially similar notice, in writing in conspicuous type, to the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R § 226.31, as amended from time to time:

#### NOTICE TO BORROWER

If you obtain this covered home loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your employment history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could also vary based upon which lender or broker you select. As a borrower, you should shop around and compare loan rates and fees.

You should also consider consulting a qualified independent credit counselor or other experienced financial advisor regarding the rates, fees, and provisions of this mortgage loan before you proceed. You should contact the United States Department of Housing and Urban Development for a list of credit counselors available in your area.

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

Borrowing for the purpose of debt consolidation can be an appropriate financial management tool. However, if you continue to incur significant new

credit card charges or other debts after this high-cost home loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Remember that property taxes and homeowners' insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Also, your payments on existing debts contribute to your credit rating. You should not accept any advice to ignore your regular payments to your existing creditors.

45-20-105.

(a) All counties, municipalities, and other political subdivisions of this state are prohibited from enacting, issuing, and enforcing ordinances, resolutions, regulations, orders, requests for proposals, or requests for bids pertaining to the financial, depository, or lending activities of persons who:

(1) Are subject to the jurisdiction of the department, including activities subject to this act;

(2) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) Are subject to the jurisdiction or regulatory supervision of a department or agency of another state; or

(4) Originate, purchase, sell, assign, securitize, or service property interests or obligations created by financial transactions or loans made,

executed, or originated by persons referred to in subdivisions (1), (2), or (3) or assist or facilitate such transactions.

The requirements of this subsection (a) shall apply to all ordinances, resolutions, rules, regulations, orders, requests for proposals, and request for bids pertaining to financial, depository, or lending activities, including any ordinances, resolutions, rules, regulations, orders, requests for proposals, and requests for bids disqualifying persons from doing business with a county, municipality, or other political subdivision of the state based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities. All existing ordinances, resolutions, rules, regulations, orders, requests for proposals, and requests for bids covered by this subsection are superseded and preempted to the extent that they are inconsistent with this subsection.

(b) Any provision of this act preempted by federal law with respect to a national bank or federal savings association also shall not apply to the same extent to:

(1) An operating subsidiary of a national bank or federal savings association which satisfies the requirements for operating subsidiaries established in 12 C.F.R. § 5.34 (relating to operating subsidiaries) or § 559.3 (relating to what are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations),

(2) A state bank or savings and loan association,

(3) A financial subsidiary of any of the above as defined in 12 U.S.C. § 24, or

(4) An industrial loan and thrift company registered under title 45, chapter 15.  
45-20-106.

The department is authorized to make and enforce such reasonable rules and regulations as are necessary and proper for the administration, enforcement, and interpretations of the provisions of this act. The department shall have sole enforcement authority for any civil action brought under this act and, notwithstanding any other laws of this state, a private right of action shall not be maintained under this act.

SECTION 2. It is the policy of this state that the laws of this state relating to financial and lending activities are to be applied on a uniform, statewide basis. To effectuate this intent, the provisions of Section 1 of this act shall apply both prospectively and retroactively.

SECTION 3. The provisions of this act are intended to supplement the provisions of any other statutes which are applicable to lenders, and nothing in this act shall be interpreted as amending or repealing, expressly or by implication, such provisions that are applicable to lenders, unless such provisions are expressly contradictory to the provisions of this act.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2003, the public welfare requiring it.